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UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA-OAKLAND

PETER MCNEFF, an individual,

Plaintiff,

vs.

THE CITY OF PLEASANTON, a City
within the State of California;
THE PLEASANTON POLICE
DEPARTMENT, a Division of
defendant City;

DAVID SWING, an individual;
LARRY COX, an individual;
BRIAN DOLAN, an individual; and
DOES 1-10, individuals;

Defendants.

Case No.: 4:23-cv-00106

**AMENDED COMPLAINT FOR
DAMAGES AND INJUNCTIVE RELIEF:**

- 1. Violation of Civil Rights –
First Amendment**
- 2. Retaliation for Engaging in Political
Activity (Cal. Lab. Code §§ 1101, 1102;
Cal. Gov. Code § 3201 *et seq.*)**
- 3. Wrongful Discharge For Lawful Off-
Duty Conduct (Cal. Lab. Code § 96(k))**

JURY TRIAL DEMANDED

Plaintiff, PETER MCNEFF, alleges the following on information and
belief:

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PARTIES

1. Plaintiff, PETER MCNEFF (hereinafter “MR. MCNEFF”), is, and at all times mentioned herein was, a competent adult residing in Contra Costa County, California and was, at all relevant times, an employee of defendant Pleasanton Police Department, a division of defendant City of Pleasanton.
2. Defendant, CITY OF PLEASANTON (hereinafter “CITY”) is, and at all times mentioned herein was, a government entity, a City within the State of California doing substantial business in Pleasanton, California County of Contra Costa.
3. Defendant, PLEASANTON POLICE DEPARTMENT (hereinafter “DEPARTMENT”) is, and at all times mentioned herein was, a Division of Defendant CITY, and a governmental entity, with its principal place of business located in Pleasanton, California, County of Contra Costa.
4. Defendant, DAVID SWING (hereinafter “MR. SWING” or “the Chief”) is, and at all times mentioned herein was, an individual and employee of defendant DEPARTMENT.
5. Defendant, LARRY COX (hereinafter “MR. COX” or “the Captain”) is, and at all times mentioned herein was, an individual and employee of defendant DEPARTMENT.
6. Defendant, BRIAN DOLAN (hereinafter “MR. DOLAN”) is, and at all times mentioned herein was, an individual and employee of defendant CITY.
7. Plaintiff is informed and believes and thereon alleges that defendants DOES 1 through 10, inclusive, are fictitious names of defendants

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1 whose true names and capacities are at this time unknown to plaintiff.
 2 Plaintiff is informed and believes and thereon alleges that each
 3 defendant so designated was the officer, director, shareholder,
 4 employer, employee, agent and/or other representative of named
 5 defendants, and that each defendant so designated is responsible in
 6 whole or in part for the damages suffered by plaintiff.

- 7 8. Plaintiff is informed and believes and thereon alleges that defendants
 8 and each of them, were acting as the agent, servant, or employee of
 9 each other and were acting within the scope of their respective
 10 employment, with the full knowledge and consent, either express or
 11 implied, of each of the other named defendants

12 JURISDICTION AND VENUE

- 13 9. Jurisdiction of matters claimed herein is properly before the United
 14 States District Court, Northern District of California, pursuant to 28
 15 U.S.C. §§ 1331 and 1343(3). This Court has supplemental jurisdiction
 16 over the related state law claims pursuant to 28 U.S.C. § 1367.
 17 10. Venue is proper in the Northern District of California pursuant to 28
 18 U.S.C. § 1392(b) because a substantial part of the acts, events, or
 19 omissions giving rise to the action occurred in this District and
 20 Defendant operates a facility within the District where Plaintiff was
 21 employed.
 22 11. Pursuant to United States District Court, Northern District of
 23 California, Civil Local Rule 3-2(c), Plaintiff is commencing this action
 24 in Oakland, California because many of the facts and circumstances of
 25 this action arose in Contra Costa County, CA.

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STATEMENT OF FACTS

12.MR. MCNEFF was a 5+ year veteran of the DEPARTMENT. His position at the time of his termination by the DEPARTMENT was Officer. Until the events described herein, MR. MCNEFF had an exemplary record and had been recognized for numerous outstanding acts, commendations, and superior performance throughout his career. His positive performance evaluations span several years and describe him as an officer who consistently demonstrates good judgment, a prepared leader, and an officer with exceptional motivation and drive. MR. MCNEFF was even described as an officer who consistently behaves in a manner which supports teamwork to accomplish the department's goals and objectives.

13. On January 6, 2021, MR. MCNEFF attended a political rally, specifically a "Stop the Steal" rally, in Sacramento, California. He did so as a private citizen and during his personal time. He did not identify himself as a police officer at this political rally. He wore civilian clothing to the political rally. MR. MCNEFF posted pictures of himself with his wife, dressed in civilian clothing, at this political rally, on his personal Facebook page. This Facebook page was used under a pseudonym, "Jonathan P." There is no evidence that MR. MCNEFF did anything other than attend and observe the political rally.

14. Another Pleasanton Police Officer saw this picture of MR. MCNEFF and his wife on social media and complained to a superior. This started widespread discussion within the Department, with fellow

1 officers as well as senior ranking, supervisory officers, regarding MR.
2 MCNEFF's political views. MR. MCNEFF was referred to as a
3 "moron" and his actions were widely criticized and ridiculed.

4 15. On January 7, 2021, a Police Sergeant sent a memorandum to MR.
5 SWING documenting internal complaints regarding MR. MCNEFF's
6 political action. In this memorandum, authored and sent one day
7 following the January 6, 2021 political rally, this Sergeant "concluded"
8 that MR. MCNEFF attended an event organized by a group known for
9 their propensity to discuss extreme violence, incitement of violence,
10 and threats. MR. MCNEFF was at a protected political rally in
11 Sacramento, California, however in this memorandum, the Sergeant
12 nonetheless concluded that the group that organized the event attended
13 by MR. MCNEFF was the same group responsible for the
14 unprecedented events at the Capitol in Washington, D.C. This
15 Sergeant went so far as to conclude that MR. MCNEFF directly
16 associated himself with the unlawful activities at the U.S. Capitol.
17 This Sergeant further concluded that MR. MCNEFF associated with
18 known extremist groups such as the "Proud Boys" and "The Three
19 Percenters" who promote racist and violent political ideologies and
20 carry out violence. These conclusions were a direct attack on MR.
21 MCNEFF's character and reputation and were unsupported by any real
22 evidence. Nevertheless, this memorandum was drafted and sent on
23 January 7, 2021, absent any conversation with MR. MCNEFF or any
24 true diligent investigation into MR. MCNEFF's actions simply
25 because MR. MCNEFF exercised his protected right to political
speech and expression.

1 16. To exacerbate the attack on MR. MCNEFF's character and reputation,
2 this January 7, 2021 memorandum contained descriptions of the hate
3 groups with which the Sergeant wrongfully concluded MR. MCNEFF
4 associated. The memorandum described the "Proud Boys" as a far
5 right white nationalist organization that promotes and engages in
6 political violence and is described as a general hate group that is
7 overtly Islamophobic and misogynistic. The memorandum further
8 described "The Three Percenters" as a far right paramilitary group that
9 promotes resistance to the federal government that is identified as an
10 "anti-government extremist group" and associated with political
11 violence linked to political violence in other areas of the country, the
12 bombing of an Islamic Center in Bloomington, Indiana, and the recent
13 plot to kidnap the Governor of the State of Michigan. Finally, the
14 memorandum described "Stop the Steal" as a campaign organized
15 nationally by StopTheSteal.us promoting conspiracy theories regarding
16 election fraud which have been repeatedly discredited. The Sergeant
17 even claimed that Stop the Steal groups were removed from social
18 media due to their members' propensity to discuss extreme violence,
19 incitement to violence, and threats. He ended by claiming these Stop
20 the Steal events were frequented by members of the Proud Boys, The
21 Three Percenters, and other radicalized groups.

22 17. MR. MCNEFF was then immediately placed on paid leave.

23 18. MR. MCNEFF remained a dutiful employee of the DEPARTMENT
24 despite the attack on his character and reputation. He continued to
25 work absent any evidence to corroborate the Sergeant's defamatory
and damaging conclusions. Instead, if asked, MR. MCNEFF would
and could explain his protected political views that he believed there

1 were errors in the 2020 election that needed a thorough investigation.
2 MR. MCNEFF never indicated and never would indicate he had any
3 support for or association with any radical or extremist group.

4 19. Shortly after January 6, 2021, other officers searched through MR.
5 MCNEFF's social media profiles to find anything that supported
6 radical and extremist political views. The DEPARTMENT was aware
7 of these searches and did not stop the rhetoric despite the fact that it
8 was false and uncorroborated.

9 20. It was not until March 8, 2021, nearly two months after MR. MCNEFF
10 was placed on leave, that MR. COX contacted MR. MCNEFF and
11 advised MR. MCNEFF that MR. SWING directed him to conduct a
12 formal internal investigation. This formal investigation commenced
13 two months after the Sergeant drafted and sent his memorandum with
14 uncorroborated and incorrect conclusions. This formal investigation,
15 sparked entirely by MR. MCNEFF's protected political speech,
16 expression, and beliefs, began two months after superiors in the
17 DEPARTMENT expressed their displeasure with MR. MCNEFF's
18 exercise of his protected political expression on his own time, as a
19 private citizen, and did nothing to stop the discussion surrounding the
20 incorrect and uncorroborated conclusion that MR. MCNEFF
21 associated with hate groups or the negative comments made about MR.
22 MCNEFF's character.

23 21. The DEPARTMENT chose to hire an outside law firm to investigate
24 MR. MCNEFF for joining that political rally where they believe he
25 associated with known hate groups. In total, as a result of their
displeasure with MR. MCNEFF's exercise of his protected political
speech and expression, the search of MR. MCNEFF's social media

1 profiles by other members of the DEPARTMENT, and the
2 DEPARTMENT's belief that MR. MCNEFF's political views were
3 too far to the right, the DEPARTMENT made five separate allegations
4 against MR. MCNEFF all relating to his current and past political
5 views. These allegations were all made as a result of the
6 DEPARTMENT's response to MR. MCNEFF attending that peaceful,
7 lawful political rally on January 6, 2021 and the subsequent search of
8 the entire history of MR. MCNEFF's social media profiles.

9 22. The DEPARTMENT chose to commence such investigation into MR.
10 MCNEFF's suspected radicalized and/or extremist associations, absent
11 any information that MR. MCNEFF actually associated with or
12 supported any such hate or extremist groups, resulting in lasting and
13 irreversible damage to MR. MCNEFF's character and reputation. The
14 DEPARTMENT did so after at least one senior officer urged them not
15 to touch this issue with a ten-foot pole.

16 23. Witnesses close to the investigation described this investigation as
17 part of the DEPARTMENT's "Patriot Purge," a concerted effort by the
18 DEPARTMENT, lead by COX and SWING, to rid the
19 DEPARTMENT of any members who did not align with liberal
20 political views.

21 24. Allegation 1.1 was the MR. MCNEFF associated with racist and anti-
22 religious extremist groups when he attended the Stop the Steal rally in
23 Sacramento, California on January 6, 2021 in violation of
24 DEPARTMENT and CITY policies.

25 25. This outside law firm interviewed a minimum of seven different
Pleasanton Police Officers as a result of the DEPARTMENT's
allegations. Each of these officers was presented with information

1 regarding MR. MCNEFF's attendance at the January 6, 2021 rally and
2 then questioned in detailed about whether they had any knowledge of
3 any racist or extremist views held by MR. MCNEFF. The questioning
4 was clearly skewed to elicit negative information about MR.
5 MCNEFF. Thus, in engaging in this type of questioning, the
6 interviewer further exacerbated the damage to MR. MCNEFF's
7 character and reputation as a result of MR. MCNEFF's exercise of his
8 protected political views. These officers were further questioned as to
9 whether this political view was immature or wrong. The officers
10 freely spoke of their opinions, mostly negative, of individuals who
11 would attend such a rally. Nevertheless, MR. MCNEFF's actions
12 were always associated with a constitutionally protected political
expression.

13 26. The interviewer from this law firm continuously asked questions of
14 Pleasanton officers in order to support the DEPARTMENT's view that
15 Mr. MCNEFF was racist. In one of these interviews, the interviewer
16 permitted the officer being questioned to search through MR.
17 MCNEFF's social media profiles in order to find anything to support
this unsubstantiated claim.

18 27. When an officer realized the interviewer was seeking information to
19 support the claim that MR. MCNEFF was racist, he replied that he
20 wasn't surprised about the racist allegations against MR. MCNEFF
21 because "McNeff has made his political views pretty clear" and "while
22 there's not 100% overlap, there's certainly some association with kind
23 of far right ideologies, racism and extremism." The interviewer made
24 clear that conservative political views were not welcome and steered

1 the conversation toward negative and disparaging comments about
2 MR. MCNEFF.

3 28. Another officer revealed to the interviewer that there was a
4 communication trail sharing information about any officer who
5 attended Pro-Trump rallies. The interviewer then proceeded to ask this
6 officer if he ever personally observed anything inappropriate about
7 MR. MCNEFF's interactions with minority members of the
8 community. The officer said he did not. The interviewer then asked if
9 anyone else ever told him they saw MR. MCNEFF act inappropriately
10 with a minority member of the public. The officer stated he did not.
11 The interviewer then goes on to ask the same questions but tailored it
12 to focus on if this officer ever witnessed MR. MCNEFF acting
13 inappropriate with someone who is not Christian. The officer had not.
14 Then interviewer asks if MR. MCNEFF ever acted inappropriately
15 with someone who is Muslim. The officer replied that he had not.

16 29. Notably, these interviews revealed that the supervisors within the
17 DEPARTMENT were vocal about their liberal political views and that
18 they openly spoke negatively about Trump supporters.

19 30. In each interview, the interviewer made clear that the main focus was
20 to corroborate the view that MR. MCNEFF was racist.

21 31. During the interviews, it came out that another Pleasanton Officer
22 made an "anonymous complaint" against MR. MCNEFF after he
23 learned that MR. MCNEFF attended the January 6, 2021 rally. This
24 officer admitted he was offended that MR. MCNEFF did so. Never
25 once did this interviewer discuss MR. MCNEFF's constitutionally
protected right to political speech and expression. Instead, the
interviewer took this as an opportunity to further paint MR. MCNEFF

1 as a racist and political extremist with no proof other than knowledge
2 of his political ideologies. This officer had never seen MR. MCNEFF
3 act inappropriately toward any minority member of the community nor
4 had this officer ever seen MR. MCNEFF engage in any racist
5 behavior.

6 32. MR. MCNEFF was questioned regarding his attendance at this January
7 6, 2021 rally. He indicated he went to observe the rally, that the rally
8 was peaceful, that he did not see anyone break the law nor did he see
9 any arrests. He made clear he does not support any radical or
10 extremist group. He simply believed there was an issue with the 2020
11 election that needed to be addressed.

12 33. Ultimately, despite its efforts to the contrary, the outside law firm
13 EXONERATED MR. MCNEFF of this allegation finding that MR.
14 MCNEFF's attendance at this political rally did not violate any
15 DEPARTMENT or CITY policies. Contrary to the Sergeant's
16 memorandum dated January 7, 2021, this law firm found the evidence
17 did NOT SUPPORT any conclusion that MR. MCNEFF attended this
18 political rally in support of any racist or anti-religious group.
19 Moreover, contrary to the Sergeant's memorandum of January 7, 2021,
20 the evidence failed to support that this political rally was predominantly
21 attended by any racist and/or anti-religious group. The law firm found
22 that MR. MCNEFF did not engage in any inappropriate behavior when
23 he attended this protected political rally. Nonetheless, the nature of
24 the questioning surrounding this allegation as well as the length of
25 time it took to start and complete this investigation irreparably harmed
Mr. MCNEFF's character and reputation.

1 34. The law firm hired to investigate MR. MCNEFF made clear
2 throughout the entirety of its investigation that it was seeking
3 information and opinions from other officers about MR. MCNEFF's
4 political views. This law firm further made clear that it was attempting
5 to establish MR. MCNEFF was seen as racist and an extremist by his
6 peers. The consistent line of questioning in this regard further
7 damaged MR. MCNEFF's reputation and impugned his character.

8 35. Allegation 1.2 was MR. MCNEFF posted racist comments on social
9 media in violation of DEPARTMENT and CITY policies. This was in
10 response to a Facebook post of a Thin Blue Line Flag, a picture or
11 depiction generally associated with those who support law
12 enforcement or "Blue Lives Matter." At least one member of the
13 DEPARTMENT alleged that, after the George Floyd incident, this
14 depiction had been coopted by far-right extremist groups and was
15 offensive to people of color. This individual claimed the picture was
16 posted in opposition to the "Black Lives Matter" movement that
17 strengthened after the George Floyd incident.

18 36. The law firm noted that MR. MCNEFF's Facebook page was
19 accessible to the public as it was seen by people outside of the
20 DEPARTMENT.

21 37. After interviewing the minimum of seven members of the
22 DEPARTMENT, this allegation was NOT SUSTAINED by the law
23 firm. Namely, the law firm noted that MR. MCNEFF made this
24 Facebook post prior to the George Floyd incident and the post did not
25 relate in opposition to Black Lives Matter or any of the civil unrest
related to the George Floyd incident.

1 38. Allegation 1.3 was MR. MCNEFF posted anti-Muslim comments on
2 social media in violation of DEPARTMENT and CITY policy. This
3 allegation was in response to two separate Facebook posts on MR.
4 MCNEFF's profile from 2014, prior to his employment with the
5 DEPARTMENT. The first post was the reposting of a video from
6 IsraelVideoNetwork.com that spoke of the establishment of Israel as a
7 sovereign state in opposition to Palestine. MR. MCNEFF posted
8 "Can't deny the truth?" as a comment to this video. The second was
9 the reposting of an article allegedly authored by Bill Cosby that states,
10 among other things, the author is "tired of being told that Islam is a
11 'Religion of Peace' when every day I read dozens of stories of Muslim
12 men killing their sisters, wives, and daughters for their family honor."
13 In 2014, MR. MCNEFF posted this article with a comment "What
14 would the world be like with more Bill Cosby's."

15 39. The law firm was unable to locate and/or view the video regarding
16 Israel posted by MR. MCNEFF on July 13, 2014 as it was no longer
17 accessible on IsraelVideoNetwork.com.

18 40. The law firm could not conclude whether the article regarding Islam
19 was in fact authored by Bill Cosby.

20 41. The law firm interviewed the minimum of seven members of the
21 DEPARTMENT regarding these 2014 Facebook posts. These seven
22 individuals were questioned at length about whether they had any
23 knowledge of MR. MCNEFF behaving inappropriately,
24 discriminatingly, or in a racist fashion toward any people of color,
25 especially Muslims.

1 42. The investigation revealed that no officer had ever observed nor heard
2 of MR. MCNEFF acting inappropriately toward any person based on
3 ethnicity, religion, race, etc.

4 43. The law firm found that the Israel video “could be” offensive to
5 Palestinian people and that the Bill Cosby article overgeneralized and
6 stereotyped Muslim men and was thus offensive.

7 44. During the investigation into this allegation, MR. MCNEFF asserted it
8 was religious and political belief that Israel was a sovereign nation. As
9 to the article regarding Islamic extremism, MR. MCNEFF asserted he
10 was opposed to violent Muslim extremism. He did not believe the
11 article stereotyped Muslim men as he believed it only referred to the
12 extremist acts.

13 45. The law firm SUSTAINED this allegation and noted that these
14 sentiments could be viewed by the public.

15 46. Allegation 1.4 was that MR. MCNEFF posted derogatory statements
16 on social media about people with mental disabilities in violation of
17 DEPARTMENT and CITY policies. This was in response to a
18 comment MR. MCNEFF posted on another Facebook page regarding
19 gun rights. MR. MCNEFF commented on an article that in essence
20 stated that guns are not the problem, it is people with mental illnesses
21 who use the guns that are the problem. As a comment to the article,
22 MR. MCNEFF asked “Why doesn’t the media catch onto this?”

23 47. Again, the law firm interviewed a minimum of seven members of the
24 DEPARTMENT regarding this Facebook comment.

25 48. In response to this allegation, MR. MCNEFF stated that he posted the
comments in 2014 based on his personal belief that mass shooters are
people that suffer with mental illnesses.

1 49. The law firm again interviewed the minimum of seven members of the
2 DEPARTMENT about this Facebook post.

3 50. The law firm DID NOT SUSTAIN this allegation, finding that the
4 evidence was insufficient to prove that MR. MCNEFF'S posted
5 Facebook comment was disparaging people with mental illnesses.
6 Notably, none of those interviewed, except for one, had ever seen this
7 post. The person that did see the post indicated they never made any
8 connection that the post was referring to people with mental illnesses.

9 51. Allegation 1.5 was that MR. MCNEFF posted comments on social
10 media that threatened violence in violation of DEPARTMENT and
11 CITY policies. This allegation stems from two separate Facebook
12 posts. The first was regarding the COVID-19 mandates in effect at the
13 time of the post. MR. MCNEFF in essence commented that people
14 will eventually revolt against these mandates and the response will be
15 violent if necessary. The second was a comment posted under a
16 photo of protesters in the street with officers. Under the photo, MR.
17 MCNEFF commented "Isn't this why cars have bumpers? J/K."

18 52. Once again, the law firm interviewed a minimum of seven members of
19 the DEPARTMENT about these Facebook posts.

20 53. The law firm found that the COVID-19 post was likely made in
21 December of 2020, while MR. MCNEFF was employed by the
22 DEPARTMENT and CITY. The law firm found that the posts were
23 somewhat linked to MR. MCNEFF's employment because his
24 Facebook page indicated he worked at the City of Pleasanton
25 Community Services and also contained a picture of the Pleasanton
police badge. The law firm found that, taken collectively, this implied
he was linked to the DEPARTMENT at the time the post was made.

1 54. As for the photo of the protesters, the law firm found that it was more
2 likely than not that MR. MCNEFF made that post prior to his
3 employment by the DEPARTMENT but that he did not remove it upon
4 commencing his employment with the DEPARTMENT.

5 55. The law firm SUSTAINED this fifth and final allegation against MR.
6 MCNEFF.

7 56. The impetus of and major focus of this investigation was MR.
8 MCNEFF's attendance at the "Stop the Steal" rally and an unfounded
9 belief that, because he attended such a rally, MR. MCNEFF associated
10 with racist and/or extremist groups. For all intents and purposes, the
11 "Stop The Steal" rally was the result of protected political beliefs
12 surrounding the 2020 presidential election. Indeed, attending that
13 political rally did not violate any DEPARTMENT policies. Yet,
14 because of his attendance and exercise of his protected political
15 speech, the DEPARTMENT's actions caused MR. MCNEFF to be
16 vilified, his character maligned, and his reputation damaged.

17 57. Throughout the investigation, a minimum of seven different members
18 of the DEPARTMENT were repeatedly questioned about MR.
19 MCNEFF's alleged racist and extremist associations and tendencies.
20 The investigation made it clear that the DEPARTMENT labeled MR.
21 MCNEFF as such simply as a result of his attendance at a political
22 rally.

23 58. MR. MCNEFF was engaged in protected political speech and
24 expression when he attended the January 6, 2021 political rally.
25 Nevertheless, the DEPARTMENT chose to alienate him, question his
character, damage his reputation, and commence a lengthy and

1 detailed investigation into MR. MCNEFF's character and ability to
2 perform as an officer.

3 59.MR. MCNEFF further engaged in protected speech when he made all
4 of the relevant Facebook posts and comments. Namely, MR.
5 MCNEFF engaged in protected political speech when he posted his
6 concerns regarding Muslim extremism, the State of Israel, and the
7 State of California's rigorous COVID-19 guidelines. Nevertheless, the
8 DEPARTMENT and CITY, via MR. NOLAN, served MR. MCNEFF
9 with a notice of termination following a Skelly hearing, terminating his
10 employment effective February 4, 2022.

11 60.MR. MCNEFF challenged that termination as per his rights under his
12 employment contract. During that challenge, that led to arbitration, the
13 CITY conceded that MR. MCNEFF's actions were in fact protected by
14 the First Amendment. Then, THE CITY claimed that MR. MCNEFF
15 could nonetheless be terminated because his Facebook posts that
16 violated various Department policies, as per his employment contract.

17 61.During this arbitration, the CITY conceded that MR. SWING had
18 ultimate decision-making power and control over the investigation into
19 MR. MCNEFF. The CITY went so far as to state the "buck stops"
20 with MR. SWING.

21 62.However, MR. SWING directed COX to review all of the findings of
22 the third party law firm and make a recommendation as to how to
23 proceed with MR. MCNEFF. While MR. SWING may have the
24 ultimate authority, he apparently delegated his role to COX.

25 63. COX reviewed and analyzed the law firm's findings regarding MR.
MCNEFF, and it was COX who recommended MR. MCNEFF be
terminated. SWING simply relied upon this recommendation. Yet,

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1 COX's ability to objectively and reasonably review any investigation
2 into MR. MCNEFF, especially on that exonerated MR. MCNEFF of
3 the allegation created by COX, the allegation that MR. MCNEFF
4 engaged in ..., is questionable since he is the very person who labeled
5 MR. MCNEFF a racist and political extremist and accused MR.
6 MCNEFF of associating with known radical, violent political extremist
7 organizations absent any proof to substantiate such a defamatory
8 claim.

9 64. It appears that MR. SWING and MR. COX engaged in the "purge" all
10 the while knowing that the First Amendment protected an individual's
11 right to political expression. The First Amendment protected MR.
12 MCNEFF's right to attend a political rally.

13 65. Then, after two years to contemplate his wrongful actions, it appears
14 that during the arbitration MR. SWING downplayed the political rally
15 that was the actual and real impetus for this investigation and stated he
16 was "bothered" by the allegedly anti-Muslim Facebook incident that
17 was the subject of the sustained allegation 1.3 discussed above.

18 66. The DEPARTMENT and CITY's stated reasons for termination are
19 pretext. MR. MCNEFF was, in fact, fired because he expressed
20 protected political opinions and ideologies deemed "unpopular" and
21 even stupid by the DEPARTMENT, MR. SWING, and MR. COX.
22 Again, witnesses close to this investigation claim that MR. SWING
23 and MR. COX were conducting a "Patriot Purge" to rid the
24 DEPARTMENT of employees who did not align with their stated
25 political beliefs.

67. Mr. MCNEFF was labeled a racist and political extremist by the
DEPARTMENT and COX on January 6, 2021. He was placed on

1 leave shortly thereafter. Nevertheless, the name calling and unfettered
 2 attacks on his character as a result of MR. MCNEFF's political views
 3 continued throughout the DEPARTMENT by members of the
 4 DEPARTMENT that were both his peers and superiors. No action
 5 was taken by any member of the DEPARTMENT to quell these
 6 attacks on MR. MCNEFF's character. It was not until many months
 7 later that anyone with any decision-making power at the
 8 DEPARTMENT learned of any Facebook posts about other topics. It
 9 is disingenuous for any DEFENDANT to now claim they based their
 10 decision to terminate solely on those posts.

11 68. As a direct and proximate result of Defendants' conduct, Plaintiff has
 12 incurred both economic and non-economic damages in an amount to
 13 be determined at trial, according to proof.

14 EXHAUSTION OF ADMINISTRATIVE REMEDIES

15
 16 69. On April 12, 2022, MR. MCNEFF submitted a complaint to the
 17 Department of Fair Employment and Housing ("DFEH") pursuant to
 18 Cal. Government Code section 12900, *et seq.* indicating he was
 19 discriminated against by his employer, THE CITY, as a result of the
 20 expression of his personal political and religious beliefs.

21 70. A true and correct copy of this complaint is attached hereto as **Exhibit**
 22 **A** and is incorporated by reference.

23 71. On April 12, 2022, DFEH acknowledged the complaint had been
 24 served, closed the case and issued a Right to Sue Notice. This Right
 25 To Sue Notice is attached as part of **Exhibit A**.

1 72. On April 11, 2022, MR. MCNEFF contacted the United States Equal
2 Employment Opportunity Commission (“EEOC”) indicating he
3 wanted to file a complaint of discrimination and harassment against
4 THE CITY.

5 73. A true and correct copy of this communication is attached hereto as
6 **Exhibit B** and is incorporated by reference.

7 74. On September 19, 2022, the EEOC indicated it would not pursue the
8 complaint.

9 75. A true and correct copy of this communication is attached hereto as
10 **Exhibit C** and is incorporated by reference.

11
12 **FIRST CAUSE OF ACTION**
13 **VIOLATION OF CIVIL RIGHTS - FIRST AMENDMENT**
14 **(42 U.S.C. § 1983)**

15 **[Against all defendants]**

16 76. MR. MCNEFF re-alleges and incorporates by reference all of the
17 paragraphs set forth above.

18 77. The individually named defendants all acted under the color of law.

19 78. The acts of the individually named Defendants deprived MR.
20 MCNEFF of his particular rights under the First Amendment of the
21 United States Constitution.

22 79. MR. SWING and MR. DOLAN had final policymaking authority from
23 the City of Pleasanton concerning these acts.

24 80. When MR. SWING and MR. DOLAN engaged in the above-described
25 acts, they were acting as final policymakers for Defendant CITY OF
PLEASANTON.

1 81.MR. MCNEFF spoke and acted as a citizen on matters of public
2 concern. Indeed, these matters are under investigation at the highest
3 levels of government today.

4 82.MR. MCNEFF suffered numerous adverse employment actions,
5 including, but not limited to, administrative leave and revocation of
6 police officer status, public shaming, disgrace and humiliation, being
7 subjected to investigation, termination of employment, and ineligibility
8 for rehire.

9 83.MR. MCNEFF's protected political speech was a substantial
10 motivating factor in the adverse employment actions, including his
11 termination. In fact, MR. MCNEFF's attendance at a political rally
12 was the actual and real impetus for all the harm suffered.

13 84.MR. MCNEFF was harmed.

14 85.Defendants' conduct was a substantial factor in causing MR.
15 MCNEFF's harm.

16 86.By engaging in the above-described acts, the individually named
17 Defendants acted with malice and deliberate indifference to MR.
18 MCNEFF's constitutionally protected rights. Specifically, they knew
19 that firing MR. MCNEFF for engaging in off-duty political speech
20 protected by the First Amendment was illegal, immoral, and wrong. In
21 addition, they knew or should have known, and acted with reckless
22 disregard of the fact that engaging in the above-described adverse
23 employment actions would result in substantial harm to MR.
24 MCNEFF, his reputation, his career, his employment, and his
25 employability. Nevertheless, they acted with cruel and retaliatory
motives and deliberate indifference to MR. MCNEFF's rights under
the law. Therefore, MR. MCNEFF seeks exemplary and punitive

1 damages in an amount sufficient to punish them for their conduct, and
 2 to set an example for others, in an amount according to proof at trial.

3 4 **SECOND CAUSE OF ACTION**

5 **RETALIATION FOR POLITICAL SPEECH AND ACTIVITY**

6 **(Cal. Lab. Code §§ 1101, 1102, Cal. Gov. Code § 3201 *et seq.*)**

7 **[Against Defendant CITY and Defendant DEPARTMENT]**

8 87.MR. MCNEFF re-alleges and incorporates by reference all of the
 9 paragraphs set forth above.

10 88. MR. MCNEFF engaged in protected political activity under California
 11 Labor Code sections 1101 and 1102 and California Government Code
 12 sections 3201 *et seq.* by attending a political rally and expressing his
 13 personal political opinions on other issues of public concern.

14 89.MR. MCNEFF suffered numerous adverse employment actions,
 15 including, but not limited to, administrative leave and revocation of
 16 police officer status, public shaming, disgrace and humiliation, being
 17 subjected to investigation, termination of employment, and ineligibility
 18 for rehire.

19 90.MR. MCNEFF's protected political activity and speech was a
 20 substantial motivating factor in the adverse employment actions,
 21 including his termination.

22 91.By subjecting MR. MCNEFF to adverse employment actions because
 23 he engaged in protected political activities and speech, Defendants
 24 violated California Labor Code sections 1101 and 1102 and California
 25 Government Code sections 3201 *et seq.*

92.MR. MCNEFF was harmed.

McNeff v. City of Pleasanton, et al.

United States District Court- NDCA

COMPLAINT

1 93. Defendants' conduct was a substantial factor in causing MR.
2 MCNEFF's harm.

3
4 **THIRD CAUSE OF ACTION**
5 **TERMINATION FOR LAWFUL, OFF-DUTY CONDUCT**
6 **(Cal. Lab. Code § 96(k))**
7 **[Against Defendant CITY and Defendant DEPARTMENT]**

8 94. MR. MCNEFF re-alleges and incorporates by reference all of the
9 paragraphs set forth above.

10 95. MR. MCNEFF engaged in lawful, off-duty conduct protected by
11 protected political activity under California Labor Code section 96(k)
12 by attending a political rally and expressing his personal political
13 opinions on other issues of public concern.

14 96. MR. MCNEFF suffered numerous adverse employment actions,
15 including, but not limited to, administrative leave and revocation of
16 police officer status, public shaming, disgrace and humiliation, being
17 subjected to investigation, termination of employment, and ineligibility
18 for rehire.

19 97. MR. MCNEFF's lawful off-duty conduct protected was a substantial
20 motivating factor in the adverse employment actions, including his
21 termination.

22 98. By subjecting MR. MCNEFF to adverse employment actions because
23 he engaged in lawful, off-duty conduct, Defendants violated California
24 Labor Code section 96(k).

25 99. MR. MCNEFF was harmed.

100. Defendants' conduct was a substantial factor in causing MR.
MCNEFF's harm.

PRAYER

Wherefore, Plaintiff prays for judgment against Defendants as follows:

1. Upon the First Cause of Action, for compensatory, economic, non-economic, consequential, general, special, exemplary and punitive damages according to proof;
2. Upon the Second Cause of Action, for compensatory, economic, non-economic, consequential, general and special damages according to proof;
3. Upon the Third Cause of Action, for compensatory, economic, non-economic, consequential, general and special damages according to proof;
4. On all causes of action, attorneys' fees and costs as provided by 42 U.S.C. § 1988, Labor Code § 2698 *et seq.*, and Code of Civil Procedure § 1021.5;
5. On all causes of action, for declaratory and injunctive relief as may be deemed appropriate; and
6. For such other and further relief, as the Court may deem just and proper.

Respectfully submitted,

DATED: April 29, 2023

/s/Karren Kenney
KARREN KENNEY
Attorney for Plaintiff
PETER MCNEFF

McNeff v. City of Pleasanton, et al.
COMPLAINT

United States District Court- NDCA

DEMAND FOR JURY TRIAL

Plaintiff hereby demands a jury trial with respect to all issues triable by jury.

Respectfully submitted,

DATED: April 29, 2023

/s/ Karren Kenney

KARREN KENNEY

Attorney for Plaintiff

PETER MCNEFF

EXHIBIT A



DEPARTMENT OF FAIR EMPLOYMENT & HOUSING

KEVIN KISH, DIRECTOR

2218 Kausen Drive, Suite 100 | Elk Grove | CA | 95758
(800) 884-1684 (Voice) | (800) 700-2320 (TTY) | California's Relay Service at 711
<http://www.dfeh.ca.gov> | Email: contact.center@dfeh.ca.gov

April 12, 2022

Pete McNeff



RE: **Notice to Complainant**
DFEH Matter Number: 202204-16656008
Right to Sue: McNeff / City of Pleasanton

Dear Pete McNeff:

Attached is a copy of your complaint of discrimination filed with the Department of Fair Employment and Housing (DFEH) pursuant to the California Fair Employment and Housing Act, Government Code section 12900 et seq. Also attached is a copy of your Notice of Case Closure and Right to Sue.

Pursuant to Government Code section 12962, DFEH will not serve these documents on the employer. You must serve the complaint separately, to all named respondents. If you do not have an attorney, you must serve the complaint yourself. Please refer to the attached Notice of Case Closure and Right to Sue for information regarding filing a private lawsuit in the State of California. A courtesy "Notice of Filing of Discrimination Complaint" is attached for your convenience.

Be advised that the DFEH does not review or edit the complaint form to ensure that it meets procedural or statutory requirements.

Sincerely,

Department of Fair Employment and Housing

**DEPARTMENT OF FAIR EMPLOYMENT & HOUSING**

KEVIN KISH, DIRECTOR

2218 Kausen Drive, Suite 100 | Elk Grove | CA | 95758
 (800) 884-1684 (Voice) | (800) 700-2320 (TTY) | California's Relay Service at 711
<http://www.dfeh.ca.gov> | Email: contact.center@dfeh.ca.gov

April 12, 2022

RE: Notice of Filing of Discrimination Complaint
 DFEH Matter Number: 202204-16656008
 Right to Sue: McNeff / City of Pleasanton

To All Respondent(s):

Enclosed is a copy of a complaint of discrimination that has been filed with the Department of Fair Employment and Housing (DFEH) in accordance with Government Code section 12960. This constitutes service of the complaint pursuant to Government Code section 12962. The complainant has requested an authorization to file a lawsuit. A copy of the Notice of Case Closure and Right to Sue is enclosed for your records.

This matter may qualify for DFEH's Small Employer Family Leave Mediation Pilot Program. Under this program, established under Government Code section 12945.21, a small employer with 5 -19 employees, charged with violation of the California Family Rights Act, Government Code section 12945.2, has the right to participate in DFEH's free mediation program. Under this program both the employee requesting an immediate right to sue and the employer charged with the violation may request that all parties participate in DFEH's free mediation program. The employee is required to contact the Department's Dispute Resolution Division prior to filing a civil action and must also indicate whether they are requesting mediation. The employee is prohibited from filing a civil action unless the Department does not initiate mediation within the time period specified in section 12945.21, subdivision (b) (4), or until the mediation is complete or is unsuccessful. The employee's statute of limitations to file a civil action, including for all related claims not arising under section 12945.2, is tolled from the date the employee contacts the Department regarding the intent to pursue legal action until the mediation is complete or is unsuccessful. You may contact DFEH's Small Employer Family Leave Mediation Pilot Program by emailing DRDOnlineRequests@dfeh.ca.gov and include the DFEH matter number indicated on the Right to Sue notice.

Please refer to the attached complaint for a list of all respondent(s) and their contact information.

No response to DFEH is requested or required.

Sincerely,



STATE OF CALIFORNIA | Business, Consumer Services and Housing Agency

GAVIN NEWSOM, GOVERNOR

DEPARTMENT OF FAIR EMPLOYMENT & HOUSING

KEVIN KISH, DIRECTOR

2218 Kausen Drive, Suite 100 | Elk Grove | CA | 95758
(800) 884-1684 (Voice) | (800) 700-2320 (TTY) | California's Relay Service at 711
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Department of Fair Employment and Housing

**DEPARTMENT OF FAIR EMPLOYMENT & HOUSING**

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April 12, 2022

Pete McNeff



RE: Notice of Case Closure and Right to Sue

DFEH Matter Number: 202204-16656008

Right to Sue: McNeff / City of Pleasanton

Dear Pete McNeff:

This letter informs you that the above-referenced complaint filed with the Department of Fair Employment and Housing (DFEH) has been closed effective April 12, 2022 because an immediate Right to Sue notice was requested.

This letter is also your Right to Sue notice. According to Government Code section 12965, subdivision (b), a civil action may be brought under the provisions of the Fair Employment and Housing Act against the person, employer, labor organization or employment agency named in the above-referenced complaint. The civil action must be filed within one year from the date of this letter.

This matter may qualify for DFEH's Small Employer Family Leave Mediation Pilot Program. Under this program, established under Government Code section 12945.21, a small employer with 5 -19 employees, charged with violation of the California Family Rights Act, Government Code section 12945.2, has the right to participate in DFEH's free mediation program. Under this program both the employee requesting an immediate right to sue and the employer charged with the violation may request that all parties participate in DFEH's free mediation program. The employee is required to contact the Department's Dispute Resolution Division prior to filing a civil action and must also indicate whether they are requesting mediation. The employee is prohibited from filing a civil action unless the Department does not initiate mediation within the time period specified in section 12945.21, subdivision (b) (4), or until the mediation is complete or is unsuccessful. The employee's statute of limitations to file a civil action, including for all related claims not arising under section 12945.2, is tolled from the date the employee contacts the Department regarding the intent to pursue legal action until the mediation is complete or is unsuccessful. Contact DFEH's Small Employer Family Leave Mediation Pilot Program by emailing DRDOnlineRequests@dfeh.ca.gov and include the DFEH matter number indicated on the Right to Sue notice.



DEPARTMENT OF FAIR EMPLOYMENT & HOUSING

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To obtain a federal Right to Sue notice, you must contact the U.S. Equal Employment Opportunity Commission (EEOC) to file a complaint within 30 days of receipt of this DFEH Notice of Case Closure or within 300 days of the alleged discriminatory act, whichever is earlier.

Sincerely,

Department of Fair Employment and Housing

**COMPLAINT OF EMPLOYMENT DISCRIMINATION
BEFORE THE STATE OF CALIFORNIA
DEPARTMENT OF FAIR EMPLOYMENT AND HOUSING
Under the California Fair Employment and Housing Act
(Gov. Code, § 12900 et seq.)**

In the Matter of the Complaint of

Pete McNeff

DFEH No. 202204-16656008

Complainant,

vs.

City of Pleasanton
4833 Bernal Ave.
Pleasanton, CA 94513

Respondents

1. Respondent **City of Pleasanton** is an **employer** subject to suit under the California Fair Employment and Housing Act (FEHA) (Gov. Code, § 12900 et seq.).

2. Complainant **Pete McNeff**, resides in the City of **Brentwood**, State of **California**.

3. Complainant alleges that on or about **February 4, 2022**, respondent took the following adverse actions:

Complainant was harassed because of complainant's religious creed - includes dress and grooming practices, medical condition (cancer or genetic characteristic).

Complainant was discriminated against because of complainant's religious creed - includes dress and grooming practices and as a result of the discrimination was terminated.

Additional Complaint Details: I was terminated from my job on 02/04/2022 after my employer determined my expression of my personal religious and political sentiments were a violation of policy. The personal statements included elements of my faith that I believe were used as the basis for the termination of my employment.

1 VERIFICATION

2 I, **Peter McNeff**, am the **Complainant** in the above-entitled complaint. I have read
3 the foregoing complaint and know the contents thereof. The same is true of my own
4 knowledge, except as to those matters which are therein alleged on information and
belief, and as to those matters, I believe it to be true.

5 On April 12, 2022, I declare under penalty of perjury under the laws of the State of
6 California that the foregoing is true and correct.

7 **Brentwood, California**
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27 *Complaint – DFEH No. 202204-16656008*

28 Date Filed: April 12, 2022

EXHIBIT B



Peter McNeff [REDACTED]

Reminder - Schedule an Interview

1 message

noreply@eeoc.gov <noreply@eeoc.gov>

Mon, Apr 11, 2022 at 4:57 AM

To: [REDACTED]

You recently submitted an inquiry, **555-2022-01250**, about alleged employment discrimination by City of Pleasanton to EEOC. We noticed that you have not yet scheduled an interview to discuss your claim. You must schedule an appointment through the calendar in order to complete the inquiry process and be interviewed by EEOC staff. If you do not schedule an interview, we will not take any action on your inquiry.

Please go the EEOC Scheduling Calendar as soon as possible to schedule an interview with EEOC.

Before your interview, please visit <https://publicportal.eeoc.gov/portal/> as soon as possible to provide additional information about your inquiry. Providing additional information is optional, but can help make the interview more productive and efficient. You may add or edit the additional information up until you have your interview with EEOC. The information you provide is confidential and will not be disclosed to your employer during an investigation.

ANSWERING THESE QUESTIONS IS NOT THE SAME AS FILING A CHARGE OF DISCRIMINATION.

A charge of discrimination is a signed statement asserting that an organization engaged in employment discrimination. It requests EEOC to take remedial action. The laws enforced by EEOC, except the Equal Pay Act, require you to [file a charge](#) before you can file a lawsuit for unlawful discrimination. There are strict [time limits](#) for filing a charge.

Notice of Confidentiality: The information contained in this transmission may contain privileged and confidential information, including information protected by federal and state privacy laws. It is intended only for the use of the person(s) named above. If you are not the intended recipient, you are hereby notified that any review, dissemination, distribution, or duplication of this communication is strictly prohibited and may be unlawful. If you are not the intended recipient, please contact us at digitalsupport@eeoc.gov and destroy all copies of the original message and attachments.

EXHIBIT C



Peter McNeff [REDACTED]

Intake Interview Follow-up: EEOC Inquiry No. 555-2022-01250

2 messages

PATRICK GHEORGHE <PATRICK.GHEORGHE@eeoc.gov>

Mon, Sep 19, 2022 at 2:12 PM

To: [REDACTED]

Dear Peter Mcneff:

Thank you for taking the time to speak with me today. This e-mail is being sent to you to confirm that on **September 19, 2022**, you and I completed an intake interview regarding your allegations of employment discrimination. As discussed during our call, the EEOC is unlikely to pursue further investigation in your allegations. After receiving this information, you declined to file and/or decided to take leave of the conversation so that you could consider your options. If and when you wish to complete the filing process, please contact me directly and I will assist you. If we do not hear from you within seven (7) calendar days of this email, we will take no further action on your inquiry. Please note that declining to file a charge at this time does not affect your right to file a charge of discrimination in the future.

If you require assistance in the future, please contact the Oakland Local Office at OAKLGOV@eeoc.gov or +1 (510) 956-0004.

Please let me know if you have any questions about the materials.

Best wishes,

Patrick Gheorghe
Investigator

U.S. Equal Employment Opportunity Commission

Oakland Local Office

[1301 Clay Street, Ste. 680](#)-North

Oakland, CA 94612

+1 (510) 956-0019 (Telephone)

+1 (510) 637-3235 (Facsimile)